IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1) S.B.Criminal Misc. Petition No. 313/2005
(Malkeet Singh Vs. State of Rajasthan & Anr.)

(2) S.B.Criminal Misc. Petition No. 314/2005
(Malkeet Singh Vs. State of Rajasthan & Anr.)

Date of order : 10.07.2006

P R E S E N T

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M.K.Garg for the petitioner.
Mr. Ashok Upadhyay, Public Prosecutor.
Mr. Pradeep Shah for the non-petitioner No.2.

BY THE COURT:-

Both these misc. petitions involve common question of law and facts and arise between the same parties and therefore, with the consent of the counsel for the parties, they are heard together and decided.

I have heard learned counsel for the parties.

The non-petitioner No.2 M/s Laxmi Steel Industries, Hanumangarh filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter) through its Proprietor Purshottam Das. During the pendency of the trial, two cheques bearing No.147283 and 147284 Ex.P-26 and Ex.P-27 were exhibited. Both these cheques were issued in

favour of 'self' and signed by the petitioner. However, the contention of the counsel for the petitioner is that these cheques were given to the complainant in return of the amount outstanding to him, and the complainant's brother Ramesh Kumar drew the amount from the bank of self cheques and as such he has paid the amount and there is no legally enforceable debt against him. Ramesh Kumar himself appeared as PW-2 in the Case No.68/2002 and denied his signature on the reverse side of the cheques and having withdrawn the amount from the bank and therefore, the petitioner moved the trial court at the stage of defence evidence to summon the bank manager as also two original cheques bearing No. 147283 and 147284 so as to get the signature of Ramesh Kumar compared with the signature on the cheques Ex.P-26 and Ex.P-27. That application came to be dismissed by the trial court, against which the petitioner filed a revision petition before the revisional court. The revisional court dismissed the revision petition. Hence by this petition, the petitioner seeks a direction to the trial court to summon concerned bank manager with two original cheques in question as also to get the signature of PW-2 Ramesh Kumar compared and examined by the handwriting expert. The matter is at the defence stage and it is the burden on the accused to show that there was no legally enforceable debt against him as also to show that he has already paid the amount by two cheques. The

petitioner has specifically came with a plea that he has paid the amount to the Proprietor of the non-petitioner firm through his brother PW-2 Ramesh Kumar by two cheques in question, which has been denied by Ramesh Kumar and therefore, it is expedient in the interest of justice to examine the signature of Ramesh Kumar by handwriting expert through the State Forensic Science Laboratory as also to summon the bank manager as witness with the two original cheques in Court. In the circumstances therefore, both the courts below have failed to consider this very material aspect of the matter while rejecting the application filed by the petitioner.

Keeping in view the gravity of the matter, if the original two cheques are not summoned through bank manager and not examined by the handwriting expert, then it would definitely result in manifest injustice to the petitioner.

In the result, both the petitions are allowed. The order impugned passed by the revisional court as well as by the trial court are set aside. The application filed by the petitioner seeking calling the witness in defence with the cheques and getting the cheques examined by the handwriting expert with the admitted signature of Ramesh Kumar, is allowed. Stay petitions stands disposed of.

(H.R.PANWAR), J.

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